IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 30TH MAY 2007 / 9TH JYAISHTA 1929

Crl.MC.No. 1595 of 2007()

CRIME NO.101/07 OF THE PATHANAMTHITTA POLICE STATION

PETITIONER: 1ST ACCUSED IN CRIME NO. 101/2007.

JEEVANKUMART, AGED 33 YEARS,
DIVAKARAN, RESIDING AT LALITHA BHAVAN,
KALLARAKKADAVU MAROOR MURI, PATHANAMTHITTA DIST.

BY ADV. SRI.P.GOPAKUMARAN NAIR
SRI.C.S.DIAS
SRI.AJITH MURALI

RESPONDENTS: COMPLAINANT IN CRIME NO. 101/2007.

STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U. NAZAR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 30/05/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 1595 OF 2007

Dated this the 30th day of May, 2007

ORDER

The petitioner faces the allegations, inter alia, under Secs.457 and 427 read with Sec.34 of the IPC. Proceedings were initiated on the basis of a private complaint which was referred to the police under Sec.156(3) of the Cr.P.C. A crime has been registered. Investigation is in progress. In the meantime, the petitioner surrendered before the learned Magistrate and sought bail. Bail was granted subject to conditions. One of the conditions, it is submitted, was that the petitioner must appear before the Investigating Officer on 2/4/07. The direction was to appear before the Investigating Officer only on that one day.

2. The petitioner did not allegedly appear before the Investigating Officer and the Investigating Officer promptly filed a report dated 3/4/07 before the learned Magistrate

complaining about the breach of the condition by the petitioner. Thereupon, without issuing any notice to the petitioner, bail granted was cancelled and a non-bailable warrant of arrest was issued against the petitioner.

3. The learned counsel for the petitioner submits that the course adopted by the learned Magistrate is most unjustified. The petitioner had actually appeared at the Police Station on 2/4/07. But a Police Constable on duty had sent the petitioner away stating that his presence is not required. It was not a case of the petitioner not appearing at all. He further submits that the learned Magistrate erred grossly in cancelling the bail swallowing an assertion made by the police without and before giving the petitioner an opportunity to know the allegation and to controvert the same. Principles of natural justice had not been followed by the learned Magistrate before cancelling the bail, it is urged.

4. Cancellation of bail already granted is one of the harsh remedies which law appoints. Such a relief, I have no hesitation to agree, cannot normally be given without giving notice to the person in whose favour the bail is granted and against him it is sought to be cancelled. Without knowing and

ascertaining the version of the petitioner, such a harsh relief should not have been granted against him. In this view of the matter, I agree with the learned counsel for the petitioner. It is not possible hence to endorse the finding that there has been a breach of the conditions of the bond. In any case, after discussions at the Bar, I am satisfied that the petitioner can be granted one more opportunity after zealously ensuring that the investigational needs are satisfied.

5. In the result:

(a) This Crl.M.C. is allowed.

(b) The impugned order dated 9/4/07 is set aside.

(c) The petitioner is directed to appear before the Investigating Officer between 10 a.m. and 1 p.m. on all Saturdays till 30/6/07. The police officials shall permit the petitioner to affix his signature in the records maintained in the Police Station in order to avoid any unnecessary disputes. The petitioner shall sign such register and then only leave the Police Station.

(R. BASANT, JUDGE)

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